

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WENDELL PETTRY,

Plaintiff,

v.

Civil Action No. 2:06cv91

BETH McCARDLE,  
MAGISTRATE JOHN DRAKE,  
Defendants.

**ORDER**

It will be recalled that on November 21, 2006, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Magistrate Judge construed Plaintiff's letter requesting that the above-styled civil action be "dropped" as a Motion to Dismiss and accordingly, recommended dismissal of the same. Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections have been received.

Upon examination of the report from the Magistrate Judge recommending dismissal of the Plaintiff's Complaint, it appears to the Court that, upon an independent de novo consideration of all matters now before it, the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Plaintiff's Motion to Dismiss shall be, and the same hereby is, **GRANTED**. Plaintiff's Complaint is **DISMISSED without prejudice** and the civil action is **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendants. It is further

**ORDERED** that if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis.

**ENTER:** August 22<sup>nd</sup> 2007

/s/ Robert E. Maxwell

United States District Judge